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12 and Firoz Jinnah

13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 SECURITIES AND EXCHANGE
16 COMMISSION,

17 Plaintiff,

18 v.

19 EXOTICS.COM, INC., et al.,

20 Defendants,

Case No.: 2:05-cv-00531-PMP-GWF

**STATUS REPORT OF DEFENDANTS
FIROZ JINNAH AND INGO MUELLER
REGARDING PRIVILEGE ISSUES**

21
22 This is the Status Report ordered by Magistrate Judge Foley in his Order of January 12,
23 2009 (Document No. 151), relating to a privilege review of computer files in the possession of
24 the Plaintiff Securities and Exchange Commission.

25 I. BACKGROUND

26 Defendants Mueller and Jinnah are residents of Vancouver, British Columbia.
27 Undersigned counsel is advised that some time in 2004, as part of the SEC's investigation which
28 led to the filing of this action, the British Columbia Securities Commission provided the SEC

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1 with a large number of documents, in electronic format, which had been seized from Mr. Mueller
2 and Mr. Jinnah by Canadian authorities.

3 The electronic files were in two media. There were three compact discs, and a hard drive
4 on to which the Canadian authorities apparently copied hard drives from a number of computers
5 located in the place of business of Messrs. Mueller and Jinnah. In addition, the hard drive
6 provided to the SEC included copies of electronic files on the personal Blackberries of both Mr.
7 Mueller and Mr. Jinnah.

8 The Canadian authorities indicated that the contents of the materials provided to the SEC
9 included documents which, on their face, appeared to be subject to attorney/client privilege. The
10 SEC offered counsel for Mr. Mueller and Mr. Jinnah the opportunity to review the electronic
11 files for privilege, and provided counsel for Mr. Mueller and Mr. Jinnah with copies of the
12 compact discs, and a copy of the hard drive which contained copies of the computer files from
13 the offices of Mr. Mueller and Mr. Jinnah.

14 The compact discs provided by the SEC, while containing a large amount of documents,
15 were in a form which was neither searchable by counsel's computer system, or which could be
16 easily converted to a searchable form. A privilege review of those documents was completed in
17 July, 2008, and a schedule identifying documents subject to attorney/client privilege was
18 provided to the SEC on July 25, 2008.

19 A review of the documents on the hard drive provided by the SEC has proved to be
20 problematic. Counsel is advised that the hard drive contains many gigabits of information in a
21 form not searchable by counsel's computer system. Counsel for Mr. Mueller and Mr. Jinnah
22 conferred with an outside vendor and ascertained that the cost of conversion to a searchable form
23 would be in excess of \$9,000. It is not reasonable for Messrs. Mueller and Jinnah to incur that
24 cost, to say nothing of the costs that would be incurred to perform the privilege review.

25 II. PRESENT STATUS

26 Because of the expense involved in converting the documents on the hard drive to a
27 searchable form, the privilege review of those documents has not been done. Mr. Mueller and
28 Mr. Jinnah believe there are several possible ways to deal with the issue of potential privilege

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without requiring them to bear an unreasonable expense in converting electronic files and paying for a privilege review of an enormous universe of documents.

Because the documents at issue were seized from Mr. Mueller and Mr. Jinnah, and not produced by them voluntarily, to the extent that the seized documents contained privileged materials, it cannot be said that either Mr. Mueller or Mr. Jinnah waived a claim to privilege.

The advisory notes to the 2006 amendments to Rule 26(f), F.R.C.P. address various protocols that can be used to minimize costs and delays relating to the issue of privilege, even where the documents are produced by the party able to claim privilege. For example, the SEC could perform a "quick peek" of the electronic files to determine documents which they may want to use in the litigation, thereby reducing the universe of documents to be reviewed for privilege. Alternatively, counsel for Mr. Mueller and Mr. Jinnah can provide search criteria to the SEC for it to perform a computerized search of documents for the purpose of identifying documents potentially subject to privilege. Counsel for Mr. Mueller and Mr. Jinnah could then review those potentially privileged documents to determine whether they wish to claim privilege on any or all of them. These mechanisms can be employed without Mr. Mueller and Mr. Jinnah waiving any claim for privilege, and without the SEC waiving any contention that any privileged claim that may be raised is not well-founded.

Counsel for Mr. Mueller and Mr. Jinnah has conferred with counsel for the SEC on several of these alternatives. However, counsel for Mr. Mueller and Mr. Jinnah was able to raise these issues with counsel for the SEC only recently and the SEC has had insufficient time to prepare a reply. Counsel for the SEC advises that the Court can expect a reply to this Status Report within several days.

Dated this 9th day of February, 2009.

Respectfully submitted,

ISAACSON ROSENBAUM P.C.

/s/ David A. Zisser

 David A. Zisser

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2009, I forwarded a true and correct copy of the foregoing Status Report of Defendants Mueller and Jinnah Regarding Privilege Issues by filing and serving the same using the ECF system or by U.S. Mail as indicated below:

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